

Message Text

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DRAFTED BY L/M/SCA - H. F. SHAMWELL, JR.

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APPROVED BY L/M/SCA - H. F. SHAMWELL, JR.

EUR/EX - MR. GARON

EUR/CE - MR. E WILLIAMS III

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FM SECSTATE WASHDC

TO AMEMBASSY BONN

UNCLAS STATE 152111

EO 11652: NA

TAGS: PFOR, AFSP

SUBJECT: WAIVER OF DIPLOMATIC IMMUNITY FOR OUTSIDE
EMPLOYMENT OF DEPENDENT

REF: (A) BONN 10733; (B) STATE 129391 AND PREVIOUS

1. REF A REQUESTED GUIDANCE FROM DEPARTMENT CONCERNING
WAIVER OF DIPLOMATIC IMMUNITY IN CASES IN WHICH PERSONS
ENTITLED TO SAME (E.G., DEPENDENTS OF DIPLOMATIC OFFICERS)
WISH TO ACCEPT OUTSIDE EMPLOYMENT REQUIRING PARTIAL WAIVER.
WHILE DEPARTMENT STRESSES GENERAL PRINCIPLE THAT ANY WAIVER
OF IMMUNITY MUST BE EXAMINED IN LIGHT OF THE CIRCUMSTANCES
PREVAILING IN THE SPECIFIC CASE UNDER CONSIDERATION, CER-
TAIN GENERAL RULES CAN BE STATED.

2. DEPARTMENT AGREES WITH EMBASSY'S STATEMENT, PARA 3
REF A, THAT THE INDIVIDUAL IN QUESTION WHO AGREES TO A
PARTIAL WAIVER CONTINUES TO ENJOY FULL IMMUNITY, WITHIN
THE APPLICABLE RULES OF INTERNATIONAL LAW AND PRACTICE,
EXCEPT FOR ACTIVITIES DIRECTLY RELATED TO THE EMPLOYMENT
IN QUESTION. FOR EXAMPLE THE INDIVIDUAL WOULD CONTINUE TO
ENJOY THE DEGREES OF IMMUNITY FROM CRIMINAL PROSECUTION AND
CIVIL SUIT PROVIDED FOR IN VIENNA CONVENTION ON DIPLOMATIC
RELATIONS (ARTICLES 31 AND 37) AND/OR UNDER DOMESTIC LAW.

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3. IF IN FACT THE EXTENT OF WAIVER OF IMMUNITY REQUIRED IN CONNECTION WITH THE ACCEPTANCE OF OUTSIDE EMPLOYMENT IS LIMITED TO JURISDICTION OVER CIVIL OR ADMINISTRATIVE MATTERS STEMMING DIRECTLY FROM ENGAGEMENT IN THE EMPLOYMENT, SUCH WAIVER WOULD BE IN KEEPING WITH THE EXCEPTION FROM CIVIL IMMUNITY FOR DIPLOMATIC AGENTS CONTAINED IN A ARTICLE 31(1)(C) OF THE VIENNA CONVENTION WITH RESPECT TO "AN ACTION RELATING TO ANY PROFESSIONAL OR COMMERCIAL ACTIVITY EXERCISED BY THE DIPLOMATIC AGENT IN THE RECEIVING STATE OUTSIDE HIS OFFICIAL FUNCTIONS."

4. THE ABOVE GENERAL INFORMATION IS FOR THE EMBASSY'S BENEFIT IN DEALING WITH CASES AS THEY ARISE. SINCE WAIVER REQUESTS ARE TREATED ON A CASE-BY-CASE BASIS AND IT IS NOT POSSIBLE TO DEVISE A FORMULA WHICH COULD HAVE EQUAL APPLICABILITY TO EACH INDIVIDUAL CASE, DEPARTMENT REQUESTS THAT EMBASSY NOT APPROACH THE FRG ON AN OFFICIAL BASIS WITH ANY STATEMENT OF GENERAL POLICY. IF FURTHER GUIDANCE IS REQUIRED IN RESPONSE TO ANY SPECIFIC INQUIRIES FROM THE FRG, DEPARTMENT WILL ENDEAVOR TO SUPPLY ADDITIONAL GUIDANCE. ROGERS

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